IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1028 of 2002
With
CRIMINAL APPEAL No. 1059 of 2002
With
CRIMINAL APPEAL No. 8 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANOJ VALMIKI PANDE - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

Criminal Appeal No. 1059 of 2002
Mr. Atul H Mehta for the appellant

Mr. KT Dave, APP for the respondent – State of Gujarat.

Criminal Appeal Nos.1028 of 2002 and 8 of 2003

MS SADHANA SAGAR for Appellants
MR KT DAVE ADDL. PUBLIC PROSECUTOR for respondent – State of Gujarat

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 13/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. In these three appeals filed under Section 374 of the Code of Criminal Procedure ('the Code' for short) the challenge is to the correctness of the judgment and order dated 21.10.2002, rendered in NDPS Case No.9 of 2000, by the learned Additional Sessions Judge, Fast Track Court No.1, Vadodara, by which the appellants (A-1, A-2 and A-3 for short) in these three appeals have been convicted for the offence punishable under Section 8 (c) read with Section 20 (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short) and all the accused persons have been sentenced to suffer R.I. for ten years and fine of Rs.1 lakh and in default of payment of fine, R.I. for further period of six months.

2. Briefly stated, the prosecution case as disclosed in the FIR and unfolded during trial is

as under:

2.1. P.W.9, N.K. Rathod, Police Inspector, was on duty on 11.7.2000 at City Police Station, Vadodara. He received an information from Rajendra Mohanrao Patil, a Police Head Constable and 'D' staff, that one Allu Suleman (A-1) is doing the business of selling charas and is also keeping stock of charas with him. On receipt of the said information, P.W.9, N.K. Rathod, reduced the same into writing in his station diary and also conveyed the said message to his official superior. P.W.9, N.K. Rathod, thereafter made preparation for raiding the house of A-1. He instructed Naginbhai Devjibhai, ASI to call two independent persons to act as panchas. On his instruction, Naginbhai Devjibhai called P.W.2, Bhupendra Sivajirao and P.W.3, Alpesh Jagdishchandra Upadhyaya, to act as panchas. These two persons were informed about the information received by N.K. Rathod from Rajendra Mohanrao Patil, and also the purpose of the raid to be carried out and they agreed to act as

panchas. Thereafter Rajeshbhai Dhorabhai, a police constable was asked to bring electronic weighing machine and he brought the electronic weighing machine. Thereafter P.W.9, N.K. Rathod, P.I., P.W.1, S.T. Desle, PSI, Naginbhai, ASI, Rajendra Mohan, Head Constable, Mahendrasinh Chhatrasinh, Police Constable and Rajesh, Police Constable in company of two panch witnesses started for the raid. As per further case of the prosecution, the raiding party reached at the residence of A-1 situated above the "G" Madar Murghi Centre, at about 1 P.M., and at that time A-1 was at his residence. P.W.9, N.K. Rathod, informed A-1 about the information received by him and also told him that they want to search his house. P.W.9, N.K. Rathod also introduced the panchas and other members of the raiding party to A-1. P.W.9, N.K. Rathod informed A-1 that he is a gazetted officer and if A-1 desires that the raid to be carried out in presence of another gazetted officer or an Executive Magistrate, arrangement for the same will be made. But, A-1 told that he does not want the raid to be carried

out in presence of any other gazetted officer or an Executive Magistrate and P.W.9, N.K. Rathod may carry on the raid. This was given in writing by A-1 to P.W.9, N.K. Rathod. They, therefore, raided the house of A-1. During the raid, from a tin box kept in a stone cup-board they recovered a lump of black substance wrapped in a plastic bag. On preliminary examination it was found to be charas. The weight of the said substance was 4 Kg. 134 Grams. From the said lumps, two samples of 50 grams each were taken and sealed and the remaining quantity of the lumps was also sealed. Thereafter the accused was arrested and he was informed about his arrest, in writing.

2.2. As per further case of the prosecution, in the meanwhile, it came to the notice of the members of the raiding party that the charas was given to A-1 by A-2 and A-3, Manoj Valmiki Pande and Ajmuddin Ahmed Anasri respectively, and they were at that time boarded in Room No.8, on the third floor of Samrat Hotel, Mangal Bazar, Vadodara. A panchnama was drawn and then the

raiding party proceeded towards Samrat Hotel and they carried out raid in the room occupied by A-2 and A-3. A-2 and A-3 were also informed about the information received by P.W.9, N.K. Rathod and also informed that they want to raid the room and N.K. Rathod, P.I. is a gazetted officer and if A-2 and A-3 want the raid to be carried out in presence of any other gazetted officer or an Executive Magistrate, they shall make necessary arrangement for that purpose but if A-2 and A-3 prefer that NK Rathod may proceed further with the raid then he will raid the room and since A-2 and A-3 gave reply in writing that they do not want the raid to be carried out in presence of any other gazetted officer or an Executive Magistrate and N.K. Rathod may carry out the raid, the raid was carried out by NK Rathod and the raiding party. During the raid, charas weighing 3 Kg. 228 grams wrapped in a plastic sheet was recovered from a rexin bag. Thereafter samples were taken from the recovered charas and sealed after completing necessary procedures. Thereafter panchnama to the said effect was drawn

in presence of the panchas. Both the accused were arrested and they were also informed in writing about their arrest.

2.3. A complaint for the aforesaid incident was lodged by P.W.1, S.T. Desle, in presence of P.W.9, N.K. Rathod before P.W.5, Arvind Hiralal, ASI in the City Police station, Vadodara which was reduced into writing and is produced on record at Ex.32. Thereafter the muddamal was entrusted to P.W.6,Kalidas Maganbhai, ASI, in intact sealed condition. Thereafter further investigation was carried out by P.W.9, N.K. Rathod, P.I.

2.4. During the course of investigation, statement of the witnesses was recorded. Muddamal was sent to FSL for analysis, through P.W.7, Amrutbhai Vajabhai, Head Constable, Ex.44.

2.5. On receipt of the report from FSL certificating that the contraband article sent for analysis was charas and as sufficient

incriminating evidence was found against the accused persons, on completion of the investigation, the charge-sheet was filed against all the accused persons for commission of the offence punishable under section 8 (c) read with section 20 (b) (ii) of the NDPS Act in the Sessions court, Vadodara.

2.6. The learned Additional Sessions Judge, Vadodara to whom the case was made over for trial framed charge against the accused persons for commission of the offence punishable under Section 8 (c) read with section 20 (b) (ii) of the NDPS Act which was read over and explained to the accused persons. The accused persons pleaded not guilty to the charge levelled against them and claimed to be tried and thereupon they were tried by the learned Additional Sessions Judge, Vadodara, in NDPS Case No.9 of 2000.

2.7. To prove the culpability of the accused persons, the prosecution has examined and relied upon the oral testimonies of 9 witnesses, the

details of which are given in para 8 of the impugned judgment and order. They are as under:

P.W. No.	Name	Ex. No.	Page No.
1	S.T. Desle, PSI - complainant	31	44
2	Bhupendra Shivajirao, Panch witness	36	62
3	Alpesh Jagdishchandra Upadhyaya, Panch witness	37	64
4	Mahendrabhai Babarbhai, Police Constable, Writer of PI and member of the raiding party	38	66
5	Arvindbhai Hiralal, ASI, In-charge of City Police Station, Vadodara	42	72
6	Kalidas Maganbhai, Crime Writer of City Police Station, Vadodara	43	74
7	Amrutbhai Vajabhai, Head Constable, who took muddamal to FSL	44	76
8	Musabhai Hajiahmedbhai, owner of Samrat Hotel	47	81
9	N.K. Rathod, PI, Investigating Officer	48	82

2.8. To prove the case against the accused persons, the prosecution has also produced a number of documents and relied upon the contents of the same, details of which are given in paragraph 9 of the impugned judgment and order.

The relevance of those documents would be discussed hereinafter in this judgment as and when required.

2.9. After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused the circumstances appearing against them in the evidence of the prosecution and recorded their further statement as required under section 313 of the Code. In their further statement, the accused persons denied the case of the prosecution in toto. They reiterated that they have been wrongly roped in the false narcotic case though they were not found with the contraband article charas. However, they did not lead any evidence nor did they examine any witness in support of their defence.

2.10. On appreciation, evaluation, analysis and scrutiny of the evidence produced by the prosecution, the trial court held that the prosecution has proved its case beyond all

reasonable doubts. According to the trial court, though independent witnesses like panchas and the owner of Samrat Hotel have not supported the persecution case, on appreciation of other evidence on record like that of the police officers, the prosecution has succeeded in proving the complicity of the accused and, therefore, the trial court found the accused persons guilty of the offence with which they ware charged and recorded the order of conviction and sentence of which reference is made in earlier paragraph of this judgment, which has given rise to instant three appeals at the instance of the accused persons.

3. Criminal Appeal No.1059 of 2002 is filed by A-1 through Mr. Atul H. Mehta, learned advocate whereas Criminal Appeal Nos.1028 of 2002 and 8 of 2003 are filed by A-2 and A-3 respectively from jail and Ms. Sadhna Sagar, learned advocate is appointed by this Court to assist them.

4. Mr. Atul H. Mehta, learned Advocate for A-1 and Ms. Sadhna Sagar, learned advocate for A-2 and A-3, have assailed the impugned judgment and order of the trial court by contending that the prosecution has examined the members of the raiding party who have not followed the mandatory and statutory provisions contained under the NDPS Act and, therefore, on account of non-compliance of the mandatory as well as statutory provisions of NDPS Act, the prosecution evidence cannot be relied upon and cannot be acted upon. It is also highlighted by them that the prosecution has not been able to successfully establish that the contraband article which was sent to FSL was not tampered with during the course of its journey from the stage of seizing and sealing till its reaching the FSL. It is also emphatically submitted by them that independent witnesses like panch witnesses and owner of the Samrat Hotel have not supported the prosecution case with regard to the recovery of charas, seizure and sealing of the same and also that A-2 and A-3 were boarded in Samrat Hotel and, therefore, the

contents of the panchnama are not proved and in that view of the matter, the prosecution has not been able to prove the culpability of the accused persons for commission of the offence punishable under section 8 (c) read with section 20 (b) (ii) of the NDPS Act. Besides this Mr. Atul Mehta, learned advocate for A-1 has raised the contention that A-1 was not in occupation of the premises from where the contraband article charas was recovered. The prosecution has relied upon four documents Ex.62, 63, 64 and 68 to prove and establish the fact that A-1 was occupying the said house and though those documents were not relevant, the trial court wrongly relied upon those documents, which has resulted into miscarriage of justice. Moreover, according to Mr. Mehta, when the panchnama of the house from where the contraband article charas weighing 4 Kg. 134 grams was recovered was drawn during the course of trial, A-1 was not found in the said premises and, therefore, the prosecution has not been able to establish the guilt of A-1. On the aforesaid premises, it is submitted by the

learned advocates for the accused that the impugned judgment and order deserves to be quashed and set aside by allowing these appeals and thereby acquitting the accused persons of the offence with which they were charged. They, therefore, urged to allow the appeals.

5. Per contra, Mr. KT Dave, learned APP for the respondent – State of Gujarat, has submitted that by voluminous evidence produced by the prosecution, complicity of the accused persons is proved beyond reasonable doubt. A-1 was caught with the contraband article charas weighing 4 Kg. 134 grams at his residence, kept in a tin box in the stone cup-board, in presence of the members of the raiding party as well as panchas which was seized and thereafter samples were drawn and sealed as per the requirements of sealing procedures and A-1 was arrested from his house itself. So far as A-2 and A-3 are concerned, they were at the relevant time boarded in Samrat Hotel. They were also caught with contraband article charas weighing 3 Kg. 228 grams from the

room occupied by them. The said quantity of charas was recovered in presence of the panchas as well as members of the raiding party. The muddamal was seized and thereafter samples were sent for analysis to FSL and the report of FSL in terms certified that the muddamal sent for analysis was charas. It is also highlighted by him that the prosecution has been successfully proved that during the course of the journey of the muddamal from the stage of recovery till its reaching at FSL it was in safe custody of police personnel and in that connection the prosecution has examined police officers in whose custody the muddamal was safely kept. It is also pointed out by him that though the panchas and owner of Samrat Hotel have turned hostile and have not supported the prosecution, it does not waken the case of the prosecution. He has submitted that it is not unknown to criminal jurisprudence about the panchas turning hostile and that now-a-days it is on increase. However, the case does not depend solely on the evidence of the panch witnesses. If the evidence of the members of the

raiding party is of sterling quality then there is no reason to discard their evidence and on the basis of the evidence of the members of the raiding party, order of conviction can be passed. In instant case, the evidence of the members of the raiding party is sterling quality and they have fully supported the prosecution case. On the aforesaid premises, according to him, the prosecution has established the case beyond reasonable doubt and, therefore, the trial court has rightly recorded the order of conviction and sentence. He further submitted that the impugned judgment and order does not warrant interference of this court in these appeals and as the appeals lack merit, they deserve to be dismissed. He, therefore, urged to dismiss the appeals.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a compete and comprehensive appreciation of all vital features of the case and the entire evidence on record

which is read an re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of the caution sounded by the Supreme Court while dealing with NDPS cases, this court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused persons and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

7. At the outset, be it noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence, the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained

thereunder.

8. In this connection, it would be appropriate to refer to the observations made by the Supreme Court in the case of Bharatbhai Bhagwanjibhai v. State of Gujarat, AIR 2003 SC 7. In para 1 of the said judgment, the Supreme Court has observed as under:

> “The Statement of Objects and Reasons of the NDPS Act categorically records the inadequacy of the existing legislation to combat illicit drug traffic and drug abuse, both at the national and international levels and it is by reason of such deficiencies in the existing laws, the legislature thought it prudent to consolidate the same and bring about a comprehensive legislation so as to meet the exigencies of the situation. A plain look at the provisions of the NDPS Act read with the Statement of Objects and the Preamble would depict the intent of legislature as regards the offences under the

said consolidated legislation, which stands expressed in rather explicit language as one of the most heinous ones in nature. This Court, however, in consonance with criminal jurisprudence of the country has been insisting on strict compliance of the safeguards provided under the statute so as to be in tune therewith".

9. In view of the stringent penal provisions and harsh punishment provided thereunder and in view of the observations made by the Supreme Court in the above referred to judgment, we have to find out as to whether in instant case strict compliance of the safeguards provided under the statute have been observed by the Police personnel during the course of the raid and seizure of the muddamal, contraband article, charas.

10. In this connection, we shall first refer to the oral testimony of P.W.1, S.T. Desle, PSI,

Ex.31, page 44 of the page book. This witness has lodged the complaint which is on record at Ex.32. He has, inter alia, testified that on 11.7.2000 he was serving as PSI in City Police Station, Vadodara. At that time NK Rathod was In charge PI of the police station. One Rajendra Mohanrao, Head Constable received information with regard to A-1 selling charas and keeping stock of charas in his house which he conveyed to NK Rathod. On getting the said information, NK Rathod noted down the said information in the station diary and conveyed the said information to his official superior. Thereafter panchas were called through Devjibhai Naginbhai, ASI of the police station and an electronic weighing machine was requestioned and kept ready. Thereafter panchas were informed about the information received by NK Rathod and preliminary panchnama was prepared and thereafter raid was carried out as mentioned in the complaint Ex.32.

11. Thereafter the prosecution has examined

and relied upon the oral testimony of P.W 9, NK Rathod, PI, Ex.48, page 82 of the paper book. He has, inter alia, testified that on 11.7.2000 he was on duty at City Police Station, Vadodara. He received an information from Rajendra Mohanrao Patil, a Police Head Constable and 'D' staff, that one Allu Suleman (A-1) is doing the business of selling charas and is also keeping stock of charas with him. On receipt of the said information, he reduced the same into writing in his station diary and also conveyed the said message to his official superior. He thereafter made preparation for raiding the house of A-1. He instructed Naginbhai Devjibhai, ASI to call two independent persons to act as panchas. On his instruction, Naginbhai Devjibhai called P.W.2, Bhupendra Sivajirao and P.W.3, Alpesh Jagdishchandra Upadhyaya to act as panchas. The information received by him from Rajendra Mohanrao Patil was conveyed to these two persons and they were also informed the purpose of the raid and since they agreed to act as panchas they were taken with the police personnel at the time

of raid. Thereafter Rajeshbhai Dhorabhai, a police constable was asked to bring electronic weighing machine and he brought the electronic weighing machine. Thereafter he, P.W.1, S.T. Desle, PSI, Naginbhai, ASI, Rajendra Mohanrao, Head Constable, Mahendrasinh Chhatrasinh, Police Constable, Rajesh, Police Constable in company of two panch witnesses started for the raid with electronic weighing machine and other things which are to be carried when going for a raid. He has further testified that the raiding party reached at the residence of A-1 situated above the "G" Madar Murghi Centre, at about 1 P.M., and at that time A-1 was present at his residence. He informed A-1 about the information received by him and also told him that they want to search his house. This witness also introduced the panchas and other members of the raiding party to A-1. He also informed A-1 that he is a gazetted officer and at the time of raid, if A-1 desires that the raid to be carried out in presence of another gazetted officer or an Executive Magistrate, arrangement for the same

will be made. To this, A-1 told that he does not want the raid to be carried out in presence of any other gazetted officer or an Executive Magistrate and P.W.9, N.K. Rathod may carry on the raid. This was taken in writing from A-1. Thereafter, they raided the house of A-1. During the raid, from a tin box kept in the stone cup-board they recovered lumps of black substance wrapped in a plastic bag. On preliminary examination it was found to be charas. The weight of the said substance was 4 Kg. 134 Grams. From the aforesaid lumps, two samples of 50 grams each were taken and sealed and the remaining quantity of the lumps was also sealed. Thereafter the accused was arrested and he was informed about his arrest, in writing.

11.1. He has further testified that in the meanwhile, it came to the notice of the members of the raiding party that the charas was given to A-1 by A-2 and A-3, Manoj Valmiki Pande and Ajmuddin Ahmed Anasri respectively, and they were at the relevant time boarded in Room No.8, on

the third floor of Samrat Hotel, Mangal Bazar, Vadodara. Therefore, the second part of the panchnama was drawn and then the raiding party proceeded towards Samrat Hotel and they carried out raid in the room occupied by A-2 and A-3. There, again, after completing the formalities which were done while raiding the house of A-1 and as A-2 and A-3 gave it in writing that they do not want the raid to be carried out in presence of any other gazetted officer or an Executive Magistrate and P.W.9, NK Rathod, who is a gazetted officer, may carry on the raid, he carried out the raid in presence of panchas and other police personnel and from a rexin bag charas weighing 3 Kg. 228 grams wrapped in plastic sheet was recovered from the room. Thereafter samples were taken from the recovered charas and sealed after completing necessary procedures. Thereafter panchnama to the said effect was drawn in presence of the panchas. Both the accused were arrested and they were also informed in writing about their arrest.

12. It may be noted that P.W.1, ST Desle, PSI, and P.W.9, NK Rathod, PI were cross-examined at length and a lot of suggestions were made to them with regard to the non-compliance of the statutory and mandatory provisions of sections 42 and 50 of the NDPS Act but they repelled all those suggestions and adhered to and reiterated that they have not only complied with the statutory provisions contained under the NDPS Act but they have also produced the documentary evidence in this connection which are on record of the case as detailed in paragraph 9 of the impugned judgment and order. Therefore these two witnesses successfully withstood the test of cross-examination and nothing substantial could be brought out from their testimony which would impeach their credibility.

13. The prosecution thereafter examined P.W.4, Mahendrabhai Babarbhai, Police Constable, who was a member of the raiding party, Ex.38, page 66 of the paper book, P.W.5, Arvindbhai Hiralal, ASI, In charge of City Police station,

Vadodara, Ex.42, page 72 of the paper book, P.W.6, Kalidas Maganbhai, Crime Writer of City Police station, Vadodara, Ex.43, page 74 of the paper book and P.W.7, Amrutbhai Vajabhai, Head Constable who took muddamal to FSL Surat, Ex.44, page 76 of the paper book. All the above referred to witnesses have testified as to what role they played in connection with this case. P.W.4, Mahendrabhai Babarbhai was a member of the raiding party. He has testified similar version which has been narrated by P.W.1, ST Desle and P.W.9, NK Rathod. P.W.5, Arvindbhai Hiralal, ASI has registered the complaint given by P.W.1 behalf of th State of Gujarat, in presence of P.W.9, NK Rathod, PI. P.W.6, Kalidas Maganbhai, Crime Writer of City Police station, Vadodara, received the muddamal charas intact in sealed condition from P.W.5, Arvindbhai Hiralal, ASI, who preserved the same under lock and key and handed over to P.W.7, Amrutbhai Vajabhai, Head Constable to deliver it at FSL, Surat. P.W.7, Amrutbhai Vajabhai, Head Constable, Ex.44, page 76 of the paper book, has stated similar version

that he received the muddamal from P.W.6, Kalidas Maganbhai to hand it over at FSL, Surat which he handed over there. He has, however, admitted that since the seal on the dispatch letter of the sample of the muddamal was not properly affixed he brought the sample of the muddamal back to the police station and on the next day after affixing the seal of the police station, handed over the same at FSL, Surat.

14. In sum and substance, P.W. Nos.4, 5, 6 and 7, who are police personnels, have deposed as per the role played by them in this case. They were also subjected to cross-examination at length by the learned advocate of the accused persons and they have repelled all those suggestions made to them with regard to the non-compliance of the statutory and mandatory provision contained under the NDPS Act as well as samples were not reached FSL intact in sealed condition. Therefore, they withstood the test of cross-examination successfully. Nothing substantial has been brought out from their evidence which would

impeach their credibility.

15. So far as the statutory provisions contained under Section 42 (1) of the NDPS Act is concerned, it deals with power of entry, search, seizure and arrest without warrant or authorization in a building, conveyance or enclosed place, between sunrise and sunset. So far as Section 42 (2) of the NDPS Act is concerned, it provides that where an officer takes down any information in writing under sub-section (1) of section 42 of the NDPS Act or records grounds for his belief under the provisos thereto, he shall forthwith send a copy thereof to his immediate official superior.

16. Admittedly, the information received by P.W.9, NK Rathod, was reduced into writing and he informed about the said information to his official superior. The entry made in the station diary by NK Rathod has been registered and extracts from the station diary are produced at Ex.51 and 52. The said information was conveyed

to his official superior, Deputy Commissioner of Police, “C” Division, Vadodara City, and extract of the said letter is produced at Ex.50. Therefore, there is no manner of doubt that the information which is required to be recorded in the station diary and conveyed to official superior as per the requirements of sections 52 (1) and (2) of the NDPS Act have been duly complied with and proved by oral testimony as well as documentary evidence.

17. So far as the compliance of the mandatory provisions of Section 50 of the NDPS Act is concerned, the evidence is consistent. Though, according to us, the person of the accused persons was not required to be searched as the muddamal was found from the stone cupboard from the house of A-1 and from the rexin bag from the room occupied by A-2 and A-3. However, at the time of raid, PW 9, NK Rathod, informed A-1 in his house that if he so desired the raid can be made in presence of another gazetted officer or an Executive Magistrate and option was left to

him but A-1 told that P.W.9, NK Rathod, who is also a gazetted officer, may search the premises. Thereafter PW 9, NK Rathod, searched the house of A-1 and recovered muddamal from a tin box kept in the stone cupboard. Similarly, A-2 and A-3 were given the same option by PW 9, NK Rathod, but they also did not opt for the same and volunteered that PW 9, NK Rathod, may search the room occupied by them and therefore PW 9, NK Rathod, searched the room and from a rexin bag the muddamal was recovered. The said aspect has been reflected from the complaint Ex.32, panchnama Ex.49 which is running in three parts. Therefore, according to us, mandatory provisions of section 50 of the NDPS Act have been compiled with.

18. So far as the journey of sample of the muddamal from the stage of seizure till it reached FSL Surat has also been duly proved by witnesses. The evidence of all the witnesses are consistent. As per the said evidence, the muddamal was not tampered with at any stage and

it reached FSL Surat in sealed condition and intact. The procedures for sealing was done as per the practice adopted by the police in NDPS cases. FSL report Ex.61 clearly shows that the muddamal was properly sealed and was intact condition. The FSL report certified that the muddamal sent for analysis was charas.

19. The contention that A-1 was not the owner/occupier/tenant or licensee of the premises from where the contraband article charas weighing 4 Kg. 134 grams was recovered at the time of raid has no substance. To establish the fact that A-1 was the owner/occupier/tenant or licensee of the premises in question, the prosecution has relied upon documents Ex.62, 63, 64 and 68. From a perusal of Ex.62, page 118 of the papers book, it is clear that it is a possession receipt received by Bhanumati Dhulsing Rajput from one Malangbhai Gulamhusain Badami. Ex.63, page 120 of the paper book, is an agreement giving possession of the house in question by the owner Bhanumati Dhulsing Rajput. Ex.64, page 121 of the

paper book is a document dated 17.12.1999 signed by A-1 which is a very important document wherein it is stated that A-1 was using and is in possession of the said premises for the last 12 years and the said premises was given to him during his marriage ceremonies for his use and he has handed over the possession to Bhanumati Dhulsing Rajput. Thereafter in the said agreement it has been further stated by him that he will hand over the possession to Bhanumati Dhulsing Rajput when he vacate the premises and he will not give the possession to any other person. Ex.68, page 124 of the paper book, is the receipt of the house tax paid by father of A-1.

20. It is sought to be canvassed by Mr. Atul Mehta, learned advocate for A-1, that during the trial, a panchnama in connection with the exact physical possession of the house from where the contraband article charas was recovered was ordered to be prepared at the instance of A-1 and at the time of making the panchnama, A-1 was not found but his brother was found in the said house

and, therefore, A-1 was not in possession of the premises in question at the time of conducting the raid. The aforesaid contention is absolutely devoid of any merit. It is obvious that during the trial A-1 was in jail and in the said house family members of A-1 were residing and, therefore, in his absence, while he was in jail, naturally his brother and other family members were staying there. Besides this, to establish the fact that A-1 was not in possession of the house where raid was carried out, preparation of panchnama in the midst of the trial is totally irrelevant and is of no use as it has no bearing with the outcome of the trial. The main aspect which is required to be noted is as to whether A-1 was found in the house in either of the capacity, when the raid was carried out. In instant case, when raid was carried out, A-1 was very much present in the said house. Therefore, this contention is also repelled and eschewed.

21. In sum and substance, from the documents Ex.62, 63, 64 and 68, it is clear that A-1 along

with his family members was residing in the premises which was raided by the raiding party and from there the contraband article charas was recovered. Moreover, A-1 and other family members were also present when the members of the raiding party entered in the said house and in presence of A-1 and other members of his family the contraband article charas was recovered from the stone cupboard. Therefore, it is duly proved that the A-1 was the owner/occupier/tenant or licensee of the premises where the raid was carried out and from where the contraband article charas weighing 4 Kg.134 grams was recovered and at the time of raid A-1 was very much present in the said house.

22. The contention that the sample of muddamal carried by P.W.7 Amrutbhai Vajabhai, Ex.44 was not accepted by the FSL as there was no dispatch seal on the sample of muddamal and therefore the possibility of the sample of the muddamal being tampered with during the journey from the police station till reaching at FSL

cannot be ruled out, has no substance. It may be noted that the sample of muddamal carried by P.W.7 Amrutbhai Vajabhai, Ex.44 was not accepted by the FSL as there was no dispatch seal on the sample of muddamal. P.W.7, Amrutbhai Vajabhai, Ex.44 in his oral testimony has admitted that the sample of muddamal was brought back from FSL as there was no dispatch seal. But after affixing dispatch seal on the very next day, the sample of muddamal was entrusted to FSL for analysis. In the letter of FSL, Ex.60, it is also clearly stated that the impression of the seal on the dispatch letter was not legible and, therefore, it was sent back. From the above fact, it cannot be said that the sample of the muddamal was tampered with during the journey from police station to FSL, Surat.

23. It is contended by both the learned advocates for the accused that P.W.2, Bhupendra Shivajirao, Panch witness, Ex.36, page 62 of the paper book and P.W.3, Alpesh Jagdishchandra Upadhyaya, Panch witness, Ex.37, page 64 of the

paper book, who are said to be independent witnesses, have not supported the prosecution case and, therefore, the prosecution has failed to prove the panchnama and hence the prosecution case cannot be believed. According to this Court, the aforesaid submission is absolutely feeble and has no substance and merit.

24. It is well settled by catena of decisions of the Supreme Court that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right

to veto to the panchas so far as the question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by court on the ground that he is a police officer. on the facts and in the circumstances of the case, this Court finds that the testimonies of P.W, 9 and 1, 4, 5, 6 and 7 not only inspiring confidence but get corroboration from the other evidence on record and from the evidence of P.W.9, NK Rathod, the contents of panchnama are proved, which is on record at Ex.49.

25. The learned advocates for the accused persons have further contended that P.W.8, Musabhai Hajiahmedbhai, Ex.47, page 81 of the paper book, who is the owner of Samrat Hotel, has also not supported the prosecution case and, therefore, the prosecution case cannot be believed has also no substance and merit. It may be stated that

for the same reasons mentioned in the above paragraph, turning of P.W.8, Musabhai Hajiahmedbhai, hostile would not affect the prosecution case in any way, as in spite of his turning hostile, there are other sufficient evidence in the form of oral testimonies as well as documentary evidence on record which would unerringly establish the guilt of the accused persons.

26. On overall view of the matter, according to this Court, the mandatory and statutory provisions contained under sections 42 (1), 42 (2), 43, 50, 52 and 57 of the NDPS Act have been adhered to and complied with by P.W.9, NK Rathod, and it is duly proved by the evidence of the prosecution witnesses. P.W.9, NK Rathod, had taken utmost care and caution while seizing and sealing the said contraband article. The apprehension of tampering with the muddamal can be ruled out as from the stage of recovery of the muddamal till its reaching the FSL, proper care and caution was taken by the police

personnel. It is on the contrary clearly proved that it was in the safe hands of police personnel and it reached at FSL intact in sealed condition for chemical analysis. Thus the complaint at Ex.32 and Panchnama at Ex.49 are duly proved.

27. In view of the aforesaid evidence, there is no manner of doubt that when the residence of A-1 was raided, from a stone cupboard, contraband article charas weighing 4 Kg. 134 Grams was recovered. Similarly, when the room occupied by A-2 and A-3 were raided, from a rexin bag, contraband article charas weighing 3 Kg. 228 grams was recovered. Necessary formalities of search and seizure were complied with in presence of panchas and the statutory requirements and formalities contained under the NDPS Act were followed and the samples were sent to FSL after following the procedures under the NDPS Act.

28. On close scrutiny of the evidence on record, we find no infirmities in the findings,

ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

29. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the trial court is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to invest public time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of form.

30. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and

sentence. The sentence awarded to the accused persons is minimum and has to be maintained.

31. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and as the appeals lack merit, deserve to be dismissed.

32. For the foregoing reasons, the appeals fail and accordingly they are dismissed. The judgment and order dated 21.10.2002, rendered in NDPS Case No.9 of 2000, by the learned Additional Sessions Judge, Fast Track Court No.1, Vadodara, by which the appellants (A-1, A-2 and A-3) in these three appeals have been convicted for the offence punishable under Section 8 (c) read with Section 20 (b) (ii) of the NDPS Act and all the accused persons have been sentenced to suffer R.I. for ten years and fine of Rs.1 lakh and in default of payment of fine, R.I. for further

period of six months, is confirmed and maintained.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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